

REMARKS

Claims 13 to 24 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Claims 13 to 24 were rejected under 35 U.S.C. § 102(b) as anticipated by German Patent No. DE 19963005 A1 to Brosche et al. ("Brosche" – see translation of laid open reference DE 19963005 A1).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Brosche reference concerns a method and a device for recording and evaluating objects in the area surrounding a motor vehicle are proposed, in which the objects are recorded using at least one radar sensor, and the distance data and/or the speed data of the objects are evaluated in at least one evaluation unit. The area surrounding the vehicle is recorded, in this instance, while utilizing a transmission signal in each case of one pulse radar

sensor in one or a plurality of receiving branches in such a way that different distance ranges are evaluated sequentially and/or in parallel. (See Brosche, Abstract).

Accordingly, Brosche does not identically describe (or suggest) the feature in which a “control device for specifying range gates within which radar pulses that are to be supplied to the mixer are continuously changeable increasingly and/or decreasingly with respect to their pulse delay; a switchover device for at least one of implementing a plurality of operating modes for holding constant transmitter-side radar pulses that are able to be supplied to the mixer with respect to their delay, in order to measure Doppler frequencies, and for producing a continuous delay into a direction that runs opposite to a preceding change”, as provided for in the context of claims 1, 12 and 13.

The Final Office Action apparently asserts that element 18 corresponds to the receiver-side mixer and element 11 corresponds to the transmitter-side radar pulses. (*Paper Number 20090120*, p. 2). It is respectfully submitted that element 18 is a switch and it doesn't receive any radar pulses. As to element 11, it is a scalar that guides output of oscillator to switches and has nothing to do with radar pulses. Accordingly, receiving radar pulses and time staggered signal at a mixer does not identically disclose (or even suggest) the feature of providing correlation between two radar pulses, as provided for in the context of the presently claimed subject matter.

Specifically, as regards Brosche, radar pulses may be received by a receiving antenna 20 of the carrier pulse transmitted by antenna 13. (*Brosche*, p. 8, lines 11 to 12). Output signal of clock pulse generator 14 is also guided via an adjustable pulse delay component 16 to an additional pulse component 17, which generates a carrier pulse that is time-staggered to the carrier pulse from pulse component 15. Using the time-staggered carrier pulse, the signal of oscillator 10 present at the other output of scalar 11 is now switched by switch 18. At mixer 19, the time-staggered signal from the output of switch 18 is present. (*Brosche*, p. 8, lines 3 to 11). As a technical matter, the Final Office Action has not clarified the difference between the transmitter side radar-pulses and received radar pulses. Even if the mixer 19 may receive radar pulses sent by transmitting antenna 13, the Final Office Action does not clarify which element corresponds to delayed transmitter-side radar pulses or which element transmits radar pulses.

Even if the Final Office Action may interpret time staggered signal from switch 18 as having a delayed component due to pulse delay element 16, the switch element does not identically disclose (or suggest) that the signals are radar pulses. Indeed, Brosche does not disclose or suggest correlation of any kind between a radar pulse and a staggered signal, since

signal and radar pulse have different structural characteristics. To the extent that the time staggered signal is not a radar pulse, Brosche does not identically disclose (or suggest) delayed transmitter-side radar pulses, let alone a receiver-side mixer that correlates received radar pulses with delayed transmitter-side radar pulses, as provided for in context of claim 13.

Moreover, the Final Office Action apparently asserts that adjustable pulse delay component 16 somehow corresponds to continuously changeable increasingly and/or decreasingly with respect to their pulse delay. (*Paper Number 20090120, p. 2*). It is respectfully submitted that generation of a time staggered signal does not identically disclose (or suggest) a device for specifying range gates within radar pulses. Specifically, a range gate, in relevant parts, represents a discrete clearance distance point having extension b. The Brosche reference is wholly silent regarding the concept of range gate, in which a control device specifies range gates within which radar pulses that are to be supplied to the mixer -- let alone a control device for specifying range gates within which radar pulses that are to be supplied to the mixer are continuously changeable increasingly and/or decreasingly with respect to their pulse delay, as provided for in context of claim 13.

For at least the foregoing reasons, claim 13, as well as its dependent claims 14 through 24, are allowable.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Brosche et al (DE 19963005 A1) in view of Mende (DE 19833327 A1).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated

reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

It is respectfully submitted that even if it were proper to combine the references as suggested (which is not conceded), the secondary Mende reference does not cure the critical deficiencies of the Brosche reference (as explained above) as to claim 13, from which claim 22 depends. Indeed, the Final Office Action does not even assert that the Mende reference cures the critical deficiencies of the Brosche reference as to claim 13.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

It is therefore respectfully submitted that claim 22 is allowable for essentially the same reasons that 13 is allowable. Accordingly, withdrawal of the obviousness rejection of claim 22 is respectfully requested.

Also, it is respectfully submitted that the Final Office Action does not specifically reject claim elements of independent claim 13. Indeed, although the Summary of the Office Action indicates that claim 13 stands rejected, the Detailed Action omits any explanation of how any cited art anticipates [or renders obvious] claim elements of “a control device for specifying range gates within which radar pulses that are to be supplied to the mixer are continuously changeable increasingly and/or decreasingly with respect to their pulse delay; a switchover device for at least one of implementing a plurality of operating modes for holding constant transmitter-side radar pulses that are able to be supplied to the mixer with respect to their delay, in order to measure Doppler frequencies, for producing a continuous delay into a direction that runs opposite to a preceding change”.

It is respectfully submitted that this omission prevents a proper articulation of a prima facie case of unpatentability, so that the burden to rebut this "rejection" has not yet shifted. Consequently, the finality of the Office Action should be withdrawn. (See MPEP § 706.07(a)).

Accordingly, claims 13 to 24 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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